APPENDIX A

BEFORE THE CHARACTER AND FITNESS COMMITTEE OF THE WASHINGTON STATE BAR ASSOCIATION

IN RE: CLARK GAREN,
Bar Applicant,

OPINION OF THE CHARACTER AND FITNESS COMMITTEE

This matter was heard by the Character and fitness Committee at the Washington State Bar Association Offices, Westin Building, 2001 Sixth Avenue, Seattle, Washington on March 30, 1996.

Committee members present were: Edward G. Holm, Shelley J. Hickey, Christina A. Meserve, Pamela J. Bartlett, Daniel D. Zender, Francis J. Kennedy, Deborah Russell, Curman M. Sebree, John T. John, and Dianne Ward Turk. The Bar Association was represented by Robert D. Welden, General Counsel. Clark Garen, the Bar applicant, was present and represented himself.

FACTUAL BACKGROUND

Clark Garen was born September 11, 1946, and was admitted to the practice of law in California in 1972 and in Texas in 1985. He graduated from the University of West Los Angeles School of Law, which is not an approved law school. He therefore applies to the Washington State Bar Association under the provision of APR 3(B)(iii), which provides that to qualify to sit for the Bar examination, an applicant must be admitted to the practice of law and be in current good standing in another state, and have had active legal experience for at least

three of five years immediately preceding filing of a Washington Bar application.

Nevada Proceedings:

On March 9, 1994, a hearing was held on Mr. Garen's application to the Nevada Bar Association. In its findings denying Mr. Garen's petition for waiver, the Committee raised issues regarding Mr. Garen's activities. On August 19, 1994, an additional hearing was held in front of the Character and Fitness Committee of the Nevada State Bar, who denied Mr. Garen's admission on January 6, 1995. This denial was based on Mr. Garen's failure to satisfy tax liens in Los Angeles County, resulting from the sale of real property. The Committee also felt there was a lack of candor in Garen's failure to obtain a business license in connection with a "900" number commercial telephone business, along with his use of ambiguous letterhead with a Las Vegas address.

On October 5, 1995, the Nevada Supreme Court entered an Order denying Mr. Garen's petition appealing the decision. The United States Supreme Court was petitioned for writ of certiorari, which has now been denied.

A summary of the problems identified by the Nevada Bar is as follows:

1. *Tax Liens:* Mr. Garen admits to having tax liens of a few thousand dollars in Los Angeles County that have been in force since 1990. He testified in Nevada that he had no intention of discharging or challenging the validity of the liens. He would allow them to languish, and if he sold any other real property in California, he would pay the liens at that time. This is still his position, he considers it his own affairs, and feels it is no one else's business.

2. *Unauthorized Practice:* Mr. Garen used the following letterhead when living in Las Vegas:

CLARK GAREN
ATTORNEY AT LAW
ADVERTISING AGENCY
1212 South Casino Center Blvd.
Las Vegas, Nevada 89104

There is no limiting language as to the fact that Mr. Garen is not admitted to practice in Nevada. Nonetheless, the Nevada Committee concluded that the ambiguity raised was not sufficient to conclude that Mr. Garen engaged in the unauthorized practice of law in the State

3. *Business License:* Mr. Garen maintained a 900 telephone number business, which he ran out of his Las Vegas home, without a city or county business license. Mr. Garen determined that what he was doing was not running a business within any ordinary terms of the word, and did not get a business license.

The following matters were also disclosed on the Washington Bar application.

4. *Loegering Litigation:* Mr. Garen was involved in a suit involving a limited partnership with Thomas J. Loegering. In 1983, the property went into foreclosure, and the parties brought litigation against each other. Mr. Garen felt that each of the parties were somewhat victorious. Mr. Garen's cross-complaint against Loegering was dismissed and Ruth Garen (the applicant's mother) was awarded a verdict for $455,000.00 against Loegering plus $35,177.00 in costs. Following the verdict, a settlement was entered into on May 14, 1990, in which Loegering transferred two parcels of real estate to Mr. Garen, and the judgment was satisfied.

5. *Bankruptcy:* In 1986, Mr. Garen filed a Chapter 7 bankruptcy which grew out of his difficulties in his real estate partnership. Loegering filed a fraud claim in the proceeding. An order of discharge was entered on July 22, 1987 and the matter was closed on August 20, 1987. In his bankruptcy proceeding, Mr. Garen claimed that the

Loegering litigation had limited value (when, in fact, it was subsequently settled for a substanial sum) and that the "900" businesses were not his assets. The representations made to the bankruptcy court were greatly at odds with Mr. Garen's apparent financial success.

Mr. Garen had also disclosed that he had filed a Chapter 11 bankruptcy petition in 1983. An objection was filed by a creditor concerning credit lines which Mr. Garen had obtained in excess of $250,000.00. The extension of credit was based on real property which he says he had acquired from his parents and transferred back to them after obtaining the loan. Neither of the transfers were recorded. The Chapter 11 was dismissed after Mr. Garen deeded his residence to Village Bank in exchange for the cancellation of his debt.

6. *Belinda Manning Litigation:* This litigation is based on a false arrest suit. Manning had sued and the suit was stayed during a bankruptcy and apparently was resolved in the bankruptcy.

7. *Other Bar Problems:* Mr. Garen indicated in his application that because he represented collection agencies, five to ten complaints have been filed by the State Bar of California against him, and they were all dismissed. The State Bar of California indicates that seven complaints were filed against Garen in 1994. One complaint concerning a collection matter was closed with a warning letter concerning communication of a party known to be represented by counsel, and a second was closed with an admonition in 1990 concerning failure to communicate with a client. A third matter resulted in a warning letter in 1992, concerning a contact with a party represented by counsel. All other matters were closed without further action.

Washington Proceedings:

Mr. Garen's application to the Washington Bar, signed on November 1, 1993, indicated that he had been admitted in Texas and California, and that he had passed

the Nevada Bar Exam and was awaiting admission there. At that time, Mr. Garen was in fact waiting for the decision of the Nevada Character and Fitness Committee, which decision was issued denying his admission on January 6, 1985. In February of 1995, Mr. Garen took the Washington Bar Exam, and on May 3, 1995, counsel for our Bar association wrote Mr. Garen regarding his failure to disclose the denial of admission in Nevada. In his response of May 11, 1995, Mr. Garen stated as follows:

> The State Bar of Nevada has recommended to the Court that I not be admitted. Under Nevada law, the State Bar of Nevada only makes recommendations to the Court. The Nevada Supreme Court makes final decisions on all admissions questions, and I am not considered to have been denied admission until I either fail to timely file a Petition with the Nevada Supreme Court or the Nevada Supreme Court makes a final decision with respect to my Petition. At this time, I have not been denied admission to the State Bar of Nevada.
>
> I did not immediately advise Washington of these proceedings for three reasons. The first was that there was nothing to report but the existence of proceedings. The second reason was that I thought the Nevada situation would be resolved prior to the availability of Washington results. The third reason was that I had not yet passed the Washington Bar Examination, and until I had passed Washington would be taking no further action.

The Nevada proceedings were made part of the Washington record and the committee spent a substantial portion of the hearing dealing with problems raised in those hearings.

RECOMMENDATION

The committee respectfully recommends that Mr. Garen not be allowed admission to the Washington State Bar Association.

Under APR 3(a), Mr. Clark Garen has the burden of establishing that he is of good moral character, and under APR 3(b), that he has active legal experience for at least 3 of 5 years immediately preceding the filing of the application. It is the committee's opinion that he did not carry this burden.

Under APR 39(c)(iii), if the applicant ". . . has previously been denied admission to the Bar in this or any other jurisdiction for reasons other than failure to pass a Bar examination" the burden of demonstrating good moral character rests on the applicant, and it is ultimately up to the Supreme Court to determine whether the Bar applicant meets that burden. The problems which are set out in the factual summaries above seem not to concern Mr. Garen, although the committee feels they are very serious indications of the applicant's character.

Mr. Garen's apparent lack of candor makes the committee somewhat apprehensive. It appears as though Mr. Garen usually tells the technical truth, yet a lack of openness and candor is apparent both through the letters and response to questions given to him by the committee.

Mr. Garen's cavalier attitude in reference to the tax liens indicate his disregard and disrespect for the lawful process. His handling of his affairs with the use of misleading stationary, problems with his business license, and his conduct within the civil and bankruptcy court systems further exacerbate the committee's doubts.

CONCLUSION

In conclusion, it is the Committee's opinion that the applicant did not carry the burden of proof required to convince the Committee members that his application should be approved, and the Committee recommends that he be denied admission to the Washington State Bar Association.

/s/ Daniel D. Zender
DANIEL D. ZENDER, Chair
Character and Fitness Committee

APPENDIX B

[WSBA Logo]

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TO: CHARACTER AND FITNESS COMMITTEE

FROM: ROBERT D. WELDEN, GENERAL COUNSEL

DATE: JANUARY 24, 1996

RE: In re CLARK GAREN—Bar Applicant

Clark Garen sat for the Winter, 1995 bar examination. After administration of the examination, it was learned that Garen was awaiting a decision from the Nevada Character and Fitness Committee on his application for admission in that state. His Washington bar examination results were not released to him pending resolution of the Nevada proceeding. On October 5, 1995, the Nevada Supreme Court denied Garen's admission. He has filed a writ of certiorari with the United States Supreme Court which is pending.

Personal Background:

Clark Garen, born September 11, 1946, was admitted to practice in California in 1972, and in Texas in 1985. He has never been professionally disciplined in either of those jurisdictions. He graduated from the University of West Los Angeles School of Law, which is not an approved law school.[1] Therefore, he applies under the provisions of

[1] APR 3(b) provides that, among alternative qualifications to sit for the bar exam is graduation from a law school approved by the

APR 3(b)(iii) which provides that to qualify to sit for the bar examination, an applicant must be admitted to practice law by examination and be of current good standing in another state, and have had active legal experience for at least 3 of the 5 years immediately preceding filing of the Washington bar application.

Nevada Bar Application:

Garen applied for a waiver of the Nevada admission to practice rule that bar applicants be graduates of ABA-approved law schools. A hearing was held before the Committee on Functional Equivalency on March 9, 1994. In its findings denying Garen's petition for waiver, the Committee raised certain issues regarding Garen's " 'activities in addition to the practice of law", particularly allegations of deceptively holding himself out as admitted in Nevada. The Committee recommended "a full hearing on the subject in the event that this recommendation is reversed." [2] On June 7, 1994, the Nevada Supreme Court reversed the Committee's decision and granted Garen's application for waiver. However, the Court referred Garen's application to the Committee on Moral Character and Fitness. Garen passed the Nevada bar examination. On August 19, 1994, a hearing was held and the Character and Fitness Committee denied Garen's admission on January 6, 1995.

The Character and Fitness Committee recommended denial of Garen's application for admission. The Committee cited Garen's failure to satisfy tax liens in Los Angeles County resulting from the sale of real property as evidence of failure to establish character and fitness to

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Board of Governors. The Board of Governors only approves those law schools approved by the American Bar Association.

[2] Garen first applied to take the Winter, 1994, Washington bar examination. On that application in response to the question regarding applicants for admission in other jurisdictions, he responded "Nevada 1993—applicantion rejected because I am not an ABA grad—matter on appeal."

practice law in Nevada, and also cited Garen's "lack of candor" regarding failure to obtain a business license in connection with a "900 number commercial telephone business" and use of "ambiguous" letterhead with a Las Vegas address; and his "cavalier attitude" regarding the tax liens.

Garen petitioned the Nevada Supreme Court for review of that decision. On October 5, 1995, the Court entered an order denying the petition. Garen has petitioned the United States Supreme Court for a writ of certiorari, which is pending.

Disclosure of Nevada Admission Proceeding on Washington Bar Application:

Garen signed his application for admission in Washington on November 21, 1994. Question T asks "Have you ever applied for admission or taken a bar examination in any other state . . .?" Garen answered "Texas—admitted; Calif—admitted; Nevada—passed exam, awaiting admission." He was at that time waiting for the decision of the Nevada Character and Fitness Committee, which was issued January 6, 1995.

Garen sat for the February, 1995 Washington bar exam. Sometime thereafter, it came to the attention of the Director of Admissions that Garen had been denied admission in Nevada. On May 3, 1995, bar counsel wrote to Garen regarding his failure to disclose the denial of admission in Nevada.

Garen responded by letter dated May 11, 1995. He stated that he had "no intention of completing my Washington admission procedure prior to making a full disclosure to you of the Nevada situation."

> The State Bar of Nevada has recommended to the Court that I not be admitted. Under Nevada law, the State Bar of Nevada only makes recommendations to the Court. The Nevada Supreme Court makes final decisions on all admissions questions, and

> I am not considered to have been denied admission until I either fail to timely file a Petition with the Nevada Supreme Court or the Nevada Supreme Court makes a final decision with respect to my Petition. At this time, I have not been denied admission to the State Bar of Nevada!
>
> I did not immediate advise Washington of these proceedings for three reasons. The first was that there was nothing to report but the existence of proceedings. The second reason was that I thought the Nevada situation would be resolved prior to the availability of Washington results. The third reason was that I had not yet passed the Washington Bar Examination, and until I had passed Washington would be taking no further action.

Garen was advised that he would not be admitted in Washington until his applicaiton had been submitted to this Committee for hearing.

Nevada Decision Denying Admission:

Tax Liens: Garen testified before the Nevada Character and Fitness Committee that Los Angeles County had filed two tax liens against him from sale of real property in 1990. He appealed the liens, and one was reduced from $276,000 to $232,000. According to the Committee findings, Garen testified that:

> he "had no intention of discharging or challenging the validity of the liens." He indicated that he was going to allow the liens to languish, and if he ever sold any other real property in California he would pay the liens at that time.[3]

The transcript from the August 19, 1994, hearing includes the following testimony regarding these liens:

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[3] Question G on the Washington bar application asks: "Are there any lawsuits or unsatisfied judgments pending against you?" Garen answered "No".

Q. Are they a legitimate charge? Do you owe the money?

A. I don't think they're legitimate. That's why I haven't paid them. I went through a hearing process and I established that what—I established what I acquired them for. And basically the—I didn't feel I got a fair hearing from the Board on the issue. I was very distressed with the way they did the values.

Q. But you did have a hearing?

A. Yes, I had a hearing.

Q. Presented your cases?

A. I presented my case. I didn't think it was a fair hearing because I felt that the board had already made up their minds in terms of what they were going to do. But I did have a hearing.

Q. And lost.

A. And lost.

Q. Did you take whatever appellate procedures were available to you to challenge that decision?

A. No, I did not.

Q. Now you're going to let it sit?

A. Now I'm going to let it sit. They will eventually end up collecting it when I sell something else in Los Angeles County.

Q. Do you own any other assets in Los Angeles County?

A. No, but I will. I will eventually have a parcel that would basically come to me through inheritance which I will have to sell—I won't have to sell, but I will sell it, and they'll end up getting paid.

Q. Do you think that that attitude towards that legitimate debt or at least one that you haven't thought was challengeable is a good attitude for a lawyer who may lose a case from time to time or have an adverse result for a client, is that the sort of advice you would give your client, don't worry about it?

A. Well, that isn't necessarily the advice I would give my client. I was very upset about it and this is my own affair and this is how I elected to handle it.

Transcript, August 19, 1994, pp. 57-58.

Unauthorized Practice: In addition, issues were raised regarding unauthorized practice in Nevada. Garen used letterhead reading:

CLARK GAREN
ATTORNEY AT LAW
ADVERTISING AGENCY
1212 South Casino Center Blvd.
Las Vegas, Nevada 8910

Above that appeared: "admitted to practice in California and Texas". The Committee noted that "There is no limiting language such as 'Only Admitted' or 'Not Admitted in Nevada' on the letterhead." However, the Committee concluded that "the ambiguity raised by it is not sufficient to conclude that he is participating in the unauthorized practice of law in the State of Nevada.

Business License: Garen also maintained a "900 telephone number" business, which he ran out of his Las Vegas home, identified on his letterhead as:

Clark Garen's
1-900-976-VEGAS
$2.99 per minute

* * *

The Las Vegas
JACKPOT
of Information

Garen had no city or county business license. The Committee noted that "it was unclear from the evidence adduced at the hearing whether or not a business license was and is required to conduct the type of business that the applicant conducts." The Committee found:

The applicant did make an anonymous inquiry with the Clark County business license authority to determine whether, based upon the information the applicant gave Clark County, a County Business license was required. After the anonymous inquiry, the applicant "got the idea that I didn't fit into any of the categories." The applicant never did file an application with either the City of Las Vegas or Clark County business license divisions for a definitive determination of whether or not a business license was required. The applicant determined ". . . that what I was doing was not running a business within the ordinary terms of the words of running a baseness . . ."

The Committee referred to this as Garen's "lack of candor in dealing with the Clark County business license division."

Other Matters Disclosed on Bar Application:

Loegering Litigation: Garen was involved in a real estate limited partnership in Houston with Thomas J. Loegering. In 1983 the property went into foreclosure. Eventually, various parties brought litigation against each other, including a suit brought by Loegering against Garen and Garen sued Loegering. Various allegations of fraud, conversion, and other theories were alleged. A jury trial was held, and according to Garen, "each of us were somewhat victorious . . . the jury only found fraud had been committed by Mr. Loegering." The jury verdict shows, among other awards, that Garen's cross-complaint against Loegering was dismissed and costs were awarded to Loegering for $5,424.00; and Ruth Garen was awarded $455,000 against Loegering, plus $35,177 in costs.

Following the verdict, a stipulated settlement was entered into on May 14, 1990, in which Loegering transferred two parcels of real estate to Garen.

Bankruptcy: In 1986, Garen filed a Chapter 7 bankruptcy proceeding growing out of his difficulties in this real estate partnership. Garen states that Loegering filed a fraud claim in that proceeding. An order of discharge was entered on July 22, 1987 and the matter was closed on August 20, 1987.

Village Bank Litigation: Garen also disclosed that he filed a Chapter 11 bankruptcy petition in 1983. An objection was filed by Village Bank concerning credit lines Garen had obtained in excess of $250,000 based on secured interests in real property which included a piece of property he says that he had acquired from his parents. He says that after issuing his financial statement to the bank, he transferred to property back to his parents. "Neither of the transfers was recorded; we just passed deeds between us." (Letter to bar counsel dated December 26, 1993).

According to Garen, after he dismissed the Chapter 11 proceeding, he deeded his residence to Village Bank in exchange for cancellation of the debt.

Belinda Manning Litigation: In the bankruptcy schedule of creditors, Belinda Diane Manning was listed as having a disputed tort claim for false arrest. In a letter to bar counsel dated February 20, 1994, Garen wrote that he did not remember much about this matter, except that Manning caused a disturbance at some property owned by Garen. He says that he was not present during the incident. The police were apparently called and Manning was arrested.

Manning sued Garen. He says that the suit was stayed during the bankruptcy, and aparently was resolved in the bankruptcy.

Other Bar Grievances:

In the supplement to his 1994 bar application, Garen wrote that "I represent collection agencies, so numerous

(5 to 10) complaints have been filed with the State Bar of California against me by debtors from whom my client has been trying to collect money." According to Garen, those were all dismissed.

On November 3, 1994, the State Bar of California wrote to the State Bar of Nevada summarizing 7 complaints filed against Garen. In 1994, one complaint concerning a collection matter was closed with a "Warning Letter" to Garen concerning communication with a party known to be represented by counsel. A second matter was closed with an Admonition in 1990 concerning failure to communicate with a client. A third matter resulted in a "Warning Letter" in 1992 to Garen concerning contact with a party represented by counsel. All other matters were closed without any other action.

Documentation:

1. Applicant of Clark Garen, Winter, 1995, with attachments.
2. "Miscellaneous Attachments to the Nevada Bar Application . . .".
3. Application of Clark Garen, Winter, 1994, with attachments.
4. Letter from Garen to Bar Counsel dated May 11, 1995.
5. Documents relating to Nevada Bar Application:
   a. Committee on Character and Fitness, Summary of Hearing.
   b. Transcript of Proceedings, August 19, 1994.
   c. Nevada Supreme Court Order Denying Petition.
   d. Petition for Certiorari (part).
6. Letter from State Bar of California, November 3, 1994.

7. Letter from Garen dated December 26, 1993, enclosing Bankruptcy documents.
8. Loegering Jury Verdict (Substitute Judgment) and Settlement Agreement.
9. Letter from Garen dated February 20, 1994, regarding Manning litigation.
10. Letters from Michael B. Farber and James B. Fitzpatrick.